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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,328	10/03/2000	Yasuo Takane	0905-0247P-SP	4817

7590 04/29/2009

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EXAMINER	
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ART UNIT	PAPER NUMBER
2622	

MAIL DATE	DELIVERY MODE
04/29/2009	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YASUO TAKANE

Appeal 2009-0517
Application 09/678,328
Technology Center 2600

Decided:[1] April 29, 2009

Before ROBERT E. NAPPI, JOHN A. JEFFERY, and
KARL D. EASTHOM, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 CFR § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

This is a decision on appeal under 35 U.S.C. § 134 of the final rejection of claims 1, 10, 13, and 14. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm the Examiner's rejection of these claims.

INVENTION

The invention is directed to a digital camera that is able to capture a good quality image even when the image is cut down by performing photometry on each of a plurality of imaging sections. *See* Spec. 2:10-12. Claim 1 is representative of the invention and reproduced below:

> 1. A digital camera comprising:
>
> a photometry device for performing photometry for each of the sections obtained by dividing an imaging area into a plurality of sections to output photometry values;
>
> an imaging device for imaging a subject, to output image data representing an image of the subject;
>
> an exposure control device for controlling an amount of exposure in said imaging device on the basis of the photometry values outputted by said photometry device;
>
> an image file create device for creating an image file for each imaging by the imagining device, the image file create device recording in the image file the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device including the identification numbers which specify each of the sections; and
>
> a recording control device for recording the image file created by said image file create device on a recording medium.

REFERENCES

Sasaki	US 5,034,804	Jul. 23, 1991
Takagi	US 5,319,416	Jun. 7, 1994

REJECTIONS AT ISSUE

The Examiner rejected claims 1, 10, 13, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Sasaki in view of Takagi.

ISSUE

Rejection of claims 1, 10, 13, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Sasaki in view of Takagi

Appellant argues on pages 5-10 of the Appeal Brief and pages 3-5 of the Reply Brief that the Examiner's rejection of claim 1 is in error. Appellant argues that neither Sasaki nor Takagi either alone or in combination teach storing photometry values for each of the plurality of sections of an imaging area. App. Br. 7-8. Appellant further argues that even if Sasaki and Takagi do teach the claimed limitation, the combination of the references is improper.

Thus, with respect to claim 1[2], Appellant's contention presents us with two issues: (1) Has Appellant shown that the Examiner erred in finding that Sasaki in view of Takagi teaches storing photometry values for each of

[2] Appellant's statements on pages 10-13 of the Appeal Brief and pages 5-6 of the Reply Brief directed to claims 10, 13, and 14 merely indicate that these claims are allowable for the reasons that claim 1 is allowable. These statements do not amount to separate arguments under 37 CFR § 41.37 (c)(1)(vii). Accordingly, claims 10, 13, and 14 are grouped with claim 1.

the plurality of sections of an imaging area? (2) If so, has Appellant shown that the Examiner erred in combining Sasaki with Takagi?

FINDINGS OF FACT

Sasaki

1. Sasaki teaches a digital camera and a method of recording images on a memory card. Col. 2, ll. 28-30.
2. The camera contains an exposure sensor that measures the amount of incident light and a control circuit uses this data to control a diaphragm. Col. 4, ll. 31-34.
3. The amount of incident light is characterized as an exposure value. This value is stored with the image on a memory card. Col. 4, ll. 31-32, col. 8, ll. 42-54, and Fig. 9E.

Takagi

4. Takagi teaches an exposure calculation device for a camera. Abstract.
5. A photographic frame is divided into multiple divisional photometric areas and the exposure calculation device performs photometry using a divisional photometry elements. Col. 1, ll. 47-51.
6. The exposure calculation device uses the photometry values E(1) to E(8) and B(1) to B(24) to perform an exposure calculation. Col. 4, ll. 28-34 and Fig. 2.
7. Photoelectric transfer element arrays detect photometry values B(1) to B(24) and store them in the AF output memory. Photometry values E(1) to E(8) are detected when a divisional

photometry section performs photometry on photometric areas F1 to F8. These values are stored in the AE output memory. Col. 3, ll. 44-54 and Figs. 2 and 3.

PRINCIPLES OF LAW

Office personnel must rely on Appellant's disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (en banc). "[I]nterpreting what is *meant* by a word *in* a claim is not to be confused with adding an extraneous limitation appearing in the specification, which is improper." *In re Cruciferous Sprout Litigation,* 301 F.3d 1343, 1348 (Fed. Cir. 2002) (internal quotation marks and citations omitted; emphasis in original).

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 414 (2007), and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that "the principles laid down in *Graham* reaffirmed the 'functional approach' of *Hotchkiss*, 11 How. 248." *KSR,* 550 U.S. at 415 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966) (emphasis added)), and reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id* at 416. The Court explained:

> When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.

Id. at 417. The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.*

ANALYSIS

Rejection of claims 1, 10, 13, and 14 under 35 U.S.C. § 103(a) as being unpatentable over Sasaki in view of Takagi

Appellant's arguments have not persuaded us that the Examiner erred in rejecting claim 1. Claim 1 recites a camera which has a device "for performing photometry for each the sections obtained by dividing an imaging area into a plurality of sections" and an image file create device for "recording in the image file the image data outputted from said imaging device and data representing the photometry values for each of the sections outputted from said photometry device " Thus the scope of the claim includes that the camera performs photometry for sections of the image and that the values obtained are stored with the image data. We note that claim 1 does not identify how long the image is stored.

The Examiner has found that the claimed photometry value is the same as Sasaki's exposure value. Ans. 6. Appellant argues that they cannot

be the same because Takagi uses photometry values to calculate an exposure value. App. Br. 7; Reply Br. 4. Appellant has not persuaded us of error in the Examiner's claim interpretation.

The Examiner equates the measurement of the amount of incident light to a photometry value. Ans. 6. Neither Appellant's Specification nor Appellant's arguments provide a definition of the term "photometry value." However, Appellant's Specification on page 2, identifies that photometry values are measured values that are used to calculate the exposure (to light) of the imaging device. Thus, the Examiner's interpretation that a measurement of the amount of incident light present is a photometry value is not inconsistent with the usage of the term in Appellant's Specification.

Having determined the scope of the claim, we turn to the teachings of the prior art. Sasaki teaches a digital camera and a method of recording images on a memory card. FF 1. The camera contains an exposure sensor that measures the amount of incident light present and refers to this measure as an exposure value. FF 2. While we concur with Appellant's statement that Takagi teaches that photometry values are used in an exposure calculation (FF 6), this does not mean that Sasaki used the term "exposure value" to refer to a value that is calculated using photometry values. Appellant has not identified any teachings in Sasaki which demonstrate that the Examiner erred in equating a photometry value with an exposure value. While there may be some ambiguity within Sasaki, nothing in the reference indicates that the exposure value is not the same as Appellant's claimed photometry value. Therefore, Appellant's argument is not found to be persuasive.

Appellant additionally argues that Takagi's photometry values are temporarily stored and are therefore not recorded in a file with image data. App. Br. 7-8; Reply Br. 4-5. While Takagi does teach temporarily storing the photometry values in the AE output memory (FF 7), the Examiner relies upon Sasaki to teach that storing these values on a memory card was known in the art. Ans. 4. Takagi determines photometry values for several photometric areas using divisional photometric elements. FF 5, 7. These photometry values are stored in AE output memory and AF output memory. FF 7. The amount of time they are stored is of no consequence since the Examiner's rejection relies upon the combined teachings of Takagi and Sasaki. Sasaki discloses storing the photometry value with the image data on a memory card. FF 3. Therefore, the combination of Takagi's ability to determine photometry values for several photometric areas with Sasaki's ability to store a photometry value with image data on a memory card teaches the claimed feature of storing photometry values and image data. As a result, Appellant's arguments have not persuaded us that the Examiner erred in finding that Sasaki in view of Takagi teaches storing photometry values for each of the plurality of sections of an imagining area.

Further, Appellant's arguments have not persuaded us that the Examiner failed to properly combine the references. Appellant argues that the references are not properly combined because the combination would require substantial reconstruction. App. Br. 9. We are not persuaded by this argument. Appellant has provided no evidence to show why the combination would require substantial reconstruction. In the absence of such argument and evidence, the Examiner's finding that a skilled artisan would have combined the references is not persuasively rebutted.

Appellant also argues that there is no motivation or suggestion to modify the references. App. Br. 10. However, the Examiner stated, on page 5 of the Answer, that the combination would "provide an exposure calculation device for cameras that is capable of calculating a correct exposure for a principled object in a back-lighted or front-lighted condition." Appellant's argument has not identified an error in the Examiner's reasoning as to why the skilled artisan would have combined the teachings. In the absence of such argument and evidence, we find the Examiner's finding that a skilled artisan would have combined the references to be sufficient as the Examiner has established that the combination is a predictable use of prior art elements according to their established functions.

Accordingly, we sustain the Examiner's rejection of claim 1. As a result, we also affirm the Examiner's rejection of claims 10, 13, and 14 which are grouped with claim 1.

CONCLUSIONS OF LAW

Appellant has not shown that the Examiner erred in finding that Sasaki in view of Takagi teaches storing photometry values for each of the plurality of sections of an imagining area.

Appellant has not shown that the Examiner erred in finding that the Examiner erred in combining Sasaki with Takagi.

SUMMARY

The Examiner's rejection of claims 1, 10, 13, and 14 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

ELD

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